

DOCKET 1181

DATE OF HEARING	August 3, 2015
NAME	Kevin Shipley
DESCRIPTION OF PROPERTY	8521 Colonial Lane
CAUSE FOR APPEAL	Relief from the ruling of the Building Official denying a building permit for an addition being located in a required side yard and the required rear yard of the property which violates Section V, C, 1, (a) & (b) of Ordinance 1175
RULING OF THE BOARD	After a discussion of the facts presented, the Board continued the matter in order for the applicant to consider revising the proposed plan.

MINUTES OF MEETING  
ZONING BOARD OF ADJUSTMENT  
Monday, August 3, 2015

DOCKET 1181  
8521 Colonial Lane

A meeting of the Zoning Board of Adjustment was held at 4:00 p.m. on Monday, August 3, 2015, at City Hall.

The following members of the board were present:

Mr. Stanley Walch, Chairman  
Ms. Robbye Toft, Vice-Chairman  
Ms. Liza Forshaw  
Mr. David Schlafly  
Mr. John Shillington

Also present were: Mr. Michael Gartenberg, Building Official; Ms. Anne Lamitola, Director of Public Works; Mayor Nancy Spewak

Mr. Walch called the meeting to order at 4:00 PM.

Notice of Public Hearing, as follows:

**NOTICE OF PUBLIC HEARING  
ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE, MISSOURI  
DOCKET NUMBER 1181**

Notice is hereby given that the Zoning Board of Adjustment of the City of Ladue, St. Louis County, Missouri, will hold a public hearing on a petition submitted by Kevin and Katherine Shipley, 8521 Colonial Lane, St. Louis, MO 63124, requesting relief from the ruling of the Building Official denying a building permit for an addition being located in a required side yard and the required rear yard of the property which violates Section V, C, 1, (a) & (b) of Ordinance 1175

The hearing will be held at 4:00 p.m. on Monday, August 3, 2015, at the City Hall, 9345 Clayton Road.

The hearing will be public and anyone interested in the proceedings will be given the opportunity to be heard.

Pursuant to Section 610.022 RSMo., the Zoning Board of Adjustment could vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney as provided under section 610.021 (1) RSMo.

Stanley Walch, Chairman  
Zoning Board of Adjustment

Mr. Walch introduced the following exhibits to be entered into the record:

Exhibit A – Zoning Ordinance 1175, as amended;  
Exhibit B – Public Notice of the Hearing;  
Exhibit C – Permit denial dated June 22 2015;  
Exhibit D – List of Residents sent notice of meeting;  
Exhibit E – Letter from the resident requesting the variance - undated  
Exhibit F – Entire file relating to the application

(Transcript attached as part of the minutes)

The court reported administered the oath to Kevin Shipley of 8521 Colonial Lane, Joe Klitzsing, architect for Mr. Shipley, Mr. Rob Fellman of 8528 Colonial Lane, Ms. Jo Christner of 8534 Colonial Lane, Ms. Pietrucha of 8525 Colonial Lane, Mr. Helmut Starr attorney representing Ms. Pietrucha, and Mr. Grow planner representing Ms. Pietrucha.

Mr. Klitzsing began the hearing by explaining the proposed project and noted that the addition will not encroach further into the side yard setback than it currently does.

Mr. Fellman stated that he is in favor of the project as supports neighbors improving their homes in lieu of them becoming rental properties or from deteriorating.

Ms. Christner stated that she is in favor of the project.

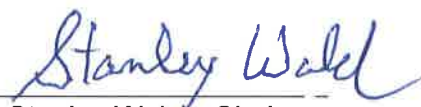
Mr. Starr raised procedural issues about the Board must only grant variances when they exist and that there is no basis for hardship when the request is rooted in personal preference. He cited code sections with regard to existing non-conforming lots and questioned the validity of the Public Notice as it does provide specifics with regard to the variance request.

Ms. Pietrucha distributed a letter to the Board opposing the project which was made part of the file.

Mr. Grow stressed that there is nothing irregular about the lot shape or topography. He provided research with regard to the other homes on the block with regard to their size and noted that many additions do meet the side yard setback. He referenced the comprehensive plan for the City of Ladue which addresses "McMansions" as a negative housing trend. Mr. Grown also noted that the floor-area ratio for 8521 Colonial would exceed 60% which is significantly higher than any other home in the subdivision.

The Public Hearing was then closed.

After further discussions with regard to the scale and mass of the proposed addition, Mr. Klitzing requested a continuance on behalf of his client Mr. Shipley. The Board continued the matter.

  
Mr. Stanley Walch, Chairman

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ZONING BOARD OF ADJUSTMENT

CITY OF LADUE

LADUE, MISSOURI

IN THE MATTER OF: )

)

KEVIN AND KATHERINE SHIPLEY ) Docket Number 1181

8521 COLONIAL LANE )

LADUE, MISSOURI 63124 )

Monday, August 3, 2015

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ORIGINAL

BOBBIE LUBER, LLC

P.O. Box 31201 ~ 1015 Grupp Road ~ St. Louis, MO 63131

314.541.3179

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A P P E A R A N C E S:

BOARD MEMBERS:

Mr. Stanley Walch, Chairman  
Ms. Liza Forshaw  
Mr. David Schlafly  
Mr. John Shillington  
Ms. Robbye Toft

Also Present:

Mr. Michael W. Gartenberg  
Ms. Anne Lamitola  
Mr. Kevin Shipley  
Mr. Joe Klitzing  
Mr. Robert Bellman  
Ms. Jo Christner  
Mr. Helmut Starr  
Mr. Roger Grow  
Ms. Donna Pietrucha

Court Reporter:  
Bobbie L. Luber  
Registered Professional Reporter #9209  
Missouri CCR #621  
Illinois CSR #084.004673  
Bobbie Luber, LLC  
P.O. Box 31201  
St. Louis, MO 63131  
(314) 993-0911  
bluber@lubercourtreporting.com

1                   (The Meeting of the Zoning Board of  
2 Adjustment of the City of Ladue having been previously  
3 called to order at 4:00 p.m. and continues as  
4 follows:)

5                   CHAIRMAN WALCH: The next case is very  
6 similar, and I'm going to depart from our usual  
7 procedure and ask the appellant, having heard the last  
8 matter, would you, too, like to request a continuance  
9 or would you prefer being heard? Okay. We will go  
10 ahead and proceed with your hearing.

11                   This is Docket Number 1118, which is 8521  
12 Colonial Lane. The petitioners are Kevin and  
13 Katherine Shipley. They are requesting in this case a  
14 variance, both because the building -- the addition  
15 being in the required side yard and in the required  
16 rear yard of the property, which are two separate  
17 violations of the ordinance. Am I correct on that  
18 Mr. Gartenberg?

19                   MR. GARTENBERG: Yes. That's correct. In  
20 this case, two side yard issues, one on each side, and  
21 a rear yard, encroachment into those three yards.

22                   CHAIRMAN WALCH: All right. Is there  
23 anything else you need to explain to make the issues  
24 clear for both the public and the members of the  
25 board, Mr. Gartenberg?

1                   MR. GARTENBERG: I'm going to take a quick  
2 look here and see if we have that same coverage issue  
3 on the side yard, as I pointed out on the last one.  
4 No, I don't believe that's the case. Mr. Chairman, I  
5 don't believe that's the case.

6                   CHAIRMAN WALCH: Beg your pardon,  
7 Mr. Gartenberg?

8                   MR. GARTENBERG: I don't believe that's the  
9 case.

10                  CHAIRMAN WALCH: You don't believe there is  
11 a coverage issue?

12                  MR. GARTENBERG: Correct.

13                  CHAIRMAN WALCH: So it's strictly a setback  
14 line issue, both yards?

15                  MR. GARTENBERG: Yes.

16                  MS. FORSHAW: I'm not able to tell from the  
17 plans where the rear yard setback is; were you,  
18 Mr. Gartenberg?

19                  MR. GARTENBERG: No. The rear yard setback  
20 is 30 feet there, and it appears to me that this  
21 building is 23 -- 24 feet from the rear property line.

22                  CHAIRMAN WALCH: All right. Any other  
23 questions of Mr. Gartenberg?

24                  I will now introduce the exhibits which  
25 will be part of the record in this appeal.



1                   Exhibit B is the public notice of this  
2                   hearing.

3                   Exhibit C is the denial letter from  
4                   Mr. Gartenberg dated June 22, 2015.

5                   Exhibit D is the list of residents to whom  
6                   the notice of this public hearing was mailed.

7                   Exhibit E is a variety of letters, close to  
8                   a dozen -- well, the principal letter, of course, is  
9                   the letter -- the appellant's letter requesting a  
10                  variance, which is undated. But in addition the  
11                  appellant has submitted, it looks -- and I'm going to  
12                  give these to the court reporter and have them marked  
13                  as part of Exhibit E. It's at least a dozen letters,  
14                  all of which read in the same manner. And I will read  
15                  it for the record.

16                  To whom it may concern. I have reviewed  
17                  the drawings for the home addition for the Shipley  
18                  residence at 8521 Colonial Lane. I would like to  
19                  pledge my support for the variance from the City of  
20                  Ladue so that the Shipley family may proceed with  
21                  their project.

22                  And as I said, there is at least a dozen of  
23                  those letters.

24                  There is also one letter of protest which  
25                  is dated August 3, 2015 from Donna Pietrucha addressed

1 to, generically, Dear Ladue Official, and it opposes  
2 the addition. She lives at 8525 Colonial Lane, which  
3 I think is very near the subject property, probably  
4 next door.

5 Would you hand these to the court reporter  
6 so that they can be -- those are the only copies we  
7 have of the letters in support. We have more of the  
8 letter -- the protest letter. The letters in support  
9 are the only copies.

10 Are there any additional letters,  
11 Ms. Lamitola?

12 MS. LAMITOLA: Not beyond the thirteen, and  
13 the one letter received today, and the one letter that  
14 was distributed.

15 CHAIRMAN WALCH: All right. I think at  
16 this point if the appellant can come forward and be  
17 sworn, and anybody who wants to speak on the  
18 appellant's behalf should come forward too now and  
19 give your name to the court reporter and be sworn in.

20 (At this time Mr. Shipley and Mr. Klitzing  
21 were sworn in by the court reporter.)

22 CHAIRMAN WALCH: All right. Mr. Shipley,  
23 you may proceed.

24 MR. SHIPLEY: Okay. We would like to  
25 propose the addition.

1                   CHAIRMAN WALCH: Is there anything else you  
2 you want to add?

3                   MR. SHIPLEY: No. I have stated everything  
4 in the letter, which you have had a chance to read on  
5 the property. We have had some of the same issues  
6 going on as Jen Kaiser.

7                   I would like Joe to talk a little bit about  
8 the project and, like Jen, if there are some changes  
9 that you can suggest or help us with, it would be  
10 helpful with the redesign project. Thank you so much.

11                  CHAIRMAN WALCH: Thank you.

12                  MR. KLITZING: I think in his letter he  
13 sent to the board he mentioned the size of his family,  
14 the size of the house, what his program is, what he is  
15 trying to accomplish.

16                  The addition comes straight off both the  
17 north and south edges of the existing building. The  
18 issue, I believe, is more important is the backyard  
19 setback. It's 22-and-a-half-feet to the property line  
20 and the screened-in porch. The side yards are  
21 maintained exactly as they are now. 8 foot on the  
22 south side, and 5 foot, 5-foot-10-and-3-quarter-inches  
23 that exist on the north side.

24                  The building to accomplish the program for  
25 Kevin and his wife and their four kids; on the first

1 floor -- the first floor is creating a new kitchen,  
2 and the location of the existing kitchen. A family  
3 room with the screened-in porch on the outside. It's  
4 one of those screens that go all the way around the  
5 south and west end elevation.

6 It creates an entry on the side directly  
7 off the existing driveway into a mud room, and then  
8 into the kitchen area. It there is an alcove for  
9 entertainment. And then access out to what is the  
10 backyard.

11 The second floor was modified and existing.  
12 Keep the existing bathroom but add a Jack-and-Jill  
13 bathroom for these two bedrooms and a master bath and  
14 closet.

15 The two-story addition portion of the  
16 building is 12 feet short of the west edge of the  
17 building. So it is in by 12 feet from what it was  
18 originally.

19 This would be the south elevation. The  
20 existing is brick. There was an existing 8-inch slab  
21 siding that went down the side, there was a small  
22 addition on one side. That was a mud room or  
23 storeroom. We are coming in with a new addition on  
24 the back side.

25 This is basically the existing house.

1 Replacing the -- replacing the old siding with new  
2 siding, the same dimension. And in discussions with  
3 the Architectural Review Board, they wanted us to  
4 change the materials to delineate the addition versus  
5 the existing.

6 The west elevation with the sliding glass  
7 doors and some copper windows down below; a window  
8 into the master bedroom.

9 This is the north addition, north elevation  
10 facing the other side.

11 The existing ceiling height of the house is  
12 about 8 feet 6 inches. We are coming in with the  
13 second floor and stepping up where we can get a 9-foot  
14 ceiling in the family room, and keep the floor at the  
15 same level as the first floor.

16 Basically the addition here is a project  
17 for his growing family, and he would like to stay in  
18 the neighborhood.

19 The problems of --

20 MS. TOFT: Hardship.

21 MR. KLITZING: That's the word.

22 MS. TOFT: The rear yard hardship is that  
23 you have to encroach on the rear yard to have a  
24 screened-in porch?

25 MR. KLITZING: That's basically to get the

1 square footage.

2 CHAIRMAN WALCH: How big is this addition  
3 all together?

4 MR. KLITZING: It's 1100 square feet on the  
5 floor plan.

6 MR. SCHLAFLY: Per floor?

7 MR. KLITZING: No. The first floor is  
8 larger than the second floor. The second floor  
9 doesn't have the screened-in porch. In other words,  
10 its basically from here over to here.

11 CHAIRMAN WALCH: Does that include the  
12 screened-in porch?

13 MR. KLITZING: Yes.

14 CHAIRMAN WALCH: And how big is the  
15 existing now?

16 MR. KLITZING: I don't know right offhand.

17 MR. SHIPLEY: 1900.

18 MR. KLITZING: There you go. Thank you.

19 CHAIRMAN WALCH: Any member of the public  
20 wish to speak to this matter? Please come forward and  
21 give your name.

22 (At this time Mr. Bellman, Ms. Christner,  
23 Mr. Starr, Mr. Grow, and Ms. Pietrucha were sworn in  
24 by the court reporter.)

25 CHAIRMAN WALCH: Mr. Shipley, I will give

1 you one thing. You have drawn a bigger crowd than we  
2 are accustomed to.

3 MR. BELLMAN: My name is Rob Bellman. I  
4 live at 8528 Colonial Lane.

5 CHAIRMAN WALCH: I would like the two --  
6 anybody who has been sworn in that is going to speak  
7 in favor, I would like them to speak first and then  
8 obviously those who are opposed.

9 MR. BELLMAN: I'm Rob Bellman. I live  
10 across the street from Kevin, and across the street  
11 from Donna.

12 I'm in favor of this because it's the  
13 utility of the neighborhood for the families that are  
14 there. If these variances aren't granted the homes  
15 don't offer them the utilities, as a result they rent  
16 the properties out, and the neighborhood becomes a  
17 rental property or a tear-down, which diminishes my  
18 property value. So for my own economic self-interest,  
19 I'm in favor of families being able to utilize their  
20 property with the necessary variance.

21 I understand this is a very difficult job  
22 to do. I think overall in the past I have seen a lot  
23 of variances. Whether they were approved or not I  
24 cannot say. I would hate to see families that I value  
25 move out of the neighborhood due to zoning issues.

1                   Thank you very much for your time.

2                   CHAIRMAN WALCH: We appreciate that. We  
3 appreciate you coming.

4                   Yes, ma'am. Did you want to speak in favor  
5 of this?

6                   MS. CHRISTNER: Yes. I'm Jo Christner. I  
7 live at 8534, which is across from Donna and across  
8 from Kevin.

9                   We built our home there better than 50  
10 years ago, and I'm here to tell you that it's a  
11 fabulous neighborhood. I appreciate that. Thank you  
12 very much because you are over the barrel because you  
13 are volunteers having to say wait, wait, wait a  
14 minute. I appreciate that. I do. That's a hard  
15 place to be. But I would urge you to recognize that  
16 this is a unique neighborhood. Unique not only to  
17 Ladue, Clayton, wherever. It's literally an enclosed  
18 circle with a little horseshoe inside. And I'm  
19 guessing there may be 60 children that live there.  
20 There are Halloween parties, we have parades. We have  
21 for years.

22                   Kevin's house is typical of what was built  
23 when the subdivision was new. So it's three bedrooms,  
24 a hall bath, and all the garages that face the street,  
25 you had to come up and you have a little turn-around



1 to pull in, and so people converted those to studies  
2 or whatever. My next-door neighbor who died in April,  
3 Olive O'Brien Haven, put an addition on the back of  
4 her house and adhered to like a 30-foot requirement  
5 from the back of the lot. And I'm looking at that, I  
6 didn't measure it, but she is maybe 20 feet from the  
7 back of her lot. I don't remember when she built  
8 that. Maybe over 20 years ago. It made so much  
9 difference to her family life just because they had  
10 this big room on the back. Because otherwise by  
11 today's standards, you know, they are hardly liveable.  
12 They really are. I hear what you are saying and I  
13 appreciate it. We live in Ladue and in Clayton behind  
14 us, they just built two new townhouses, and the board  
15 granted this, that, and the other thing, and the  
16 builder raised the elevation. We have a big water  
17 problem now, just us and Olive.

18 So I hope you will be charitable with this.  
19 Thank you very much.

20 CHAIRMAN WALCH: Thank you. I think  
21 everybody else is opposed. So it's up to you how you  
22 want to proceed.

23 MR. STARR: Thank you, Mr. Chairman. I'm  
24 Helmut Starr. I will start.

25 Good afternoon. I know it has been a long

1     afternoon, I will try to keep this short. But what I  
2     am looking at here, your ordinance, your zoning  
3     ordinance, and so unfortunately I have to do this with  
4     both hands. But I wanted to raise some procedural  
5     issues with you first. And I think that your job  
6     probably is a lot easier here legally than the public  
7     understands. And I don't mean to lecture on the law  
8     to you, but I thought it might be helpful for some of  
9     the folks in the audience to hear how you are  
10    constrained in what you do.

11                 As a Board of Adjustment you are not here  
12    as a legislative body. You don't get to change the  
13    law of the city. That's done by the City Council.  
14    And once those ordinances were passed, the law in  
15    Missouri says in case after case after case that  
16    variances are to be given sparingly. And they are  
17    only supposed to be given in the situation where you  
18    have a hardship or a severe practical difficulty that  
19    relates specifically to the land, not because it's a  
20    personal preference of the homeowner.

21                 If somebody wants to have eight children in  
22    the house, that doesn't mean that they should be  
23    allowed to build a house of square feet on a lot that  
24    doesn't support that. That is a personal preference.  
25    It has nothing to do with the shape or the topography

1 of the land.

2           You haven't heard a single word by any  
3 applicant here tonight that has given you any basis  
4 for a hardship or practical difficulty that related to  
5 the land. It's all personal preference. I just  
6 wanted to say that at the outset.

7           Second of all, it's not clear to me that in  
8 this particular case that they even have a right to a  
9 variance because you have a nonconforming lot. This  
10 is a 6500 square foot lot in a 10,000 square foot  
11 district. It's a legal nonconforming lot, I take it.  
12 And in your Section 4 D 7 at page 12 of your Zoning  
13 Code 1175, it states that with regard to a  
14 nonconforming residential building in use as a  
15 single-family residence within a residential zoning  
16 district located on a legal nonconforming lot, it may  
17 continue to be used as a single-family residence and  
18 may be enlarged provided that the enlargement conforms  
19 to all setback height and other regulations of this  
20 ordinance. It doesn't allow for variations of a  
21 nonconforming building on a nonconforming lot. And  
22 then that is reiterated on page 28 of your code in  
23 Section 5 D 2. Sorry. But I want to get to the page.  
24 In 5 D 2 it has exceptions to lot areas. And, again,  
25 it has existing buildings that are in violation of lot

1 area requirements that may be remodeled or repaired  
2 and may be enlarged or structurally altered, but only  
3 if such enlargement or alteration is not in violation  
4 of the yard requirement.

5           So you have a second provision in the code  
6 that really doesn't allow a variance in this  
7 circumstance, because the building is already in  
8 violation of the lot.

9           And then I think there is a due process  
10 issue here too. I don't believe that the public  
11 notice that was given complied to either Missouri law  
12 or with Ladue ordinances in that no one has ever  
13 specified in anything that was published or in the  
14 application, which is required under your regulations,  
15 what the specific variance is that's being requested.  
16 You simply cannot read anything that's published and  
17 figure out what the variances are that you are  
18 supposed to be opposing. And to complicate matters, I  
19 came here tonight and found out there is another issue  
20 about lot coverage that may also be a problem that we  
21 would not have had any notice of whatsoever to even  
22 consider. And so from that perspective I don't  
23 believe that the procedure was followed.

24           Your code says that the applicant must give  
25 a specific statement of the variance that's requested.

1 There is nothing in the letter that serves as the  
2 application in this case that mentions any kind of a  
3 variance. That I think is a defect, and I believe a  
4 court would throw out any decision you make in this  
5 regard anyway.

6 I don't believe substantively there is any  
7 basis for hardship. But I want to turn that over to  
8 my client and let her talk about impact that granting  
9 a variance would have on her property, and then  
10 Mr. Grow would like to talk to you a little bit about  
11 how it would be in conflict with the comprehensive  
12 plan of the city.

13 CHAIRMAN WALCH: Any questions before he  
14 sits down?

15 MS. CHRISTNER: I could not hear what he  
16 was saying. Can you repeat what he said?

17 CHAIRMAN WALCH: He gave a lot of legal  
18 arguments. I'm a lawyer myself. I think I understood  
19 them. I don't necessarily agree with all of them.

20 That was mainly what he talked about was  
21 the ordinance.

22 MS. CHRISTNER: And again to my point,  
23 these homes were built way before the ordinance.

24 CHAIRMAN WALCH: We are keenly aware of  
25 that. We are keenly aware of that fact.

1 MS. CHRISTNER: Yes. Thank you.

2 CHAIRMAN WALCH: You wrote the letter;  
3 correct?

4 MS. PIETRUCHA: Yes. And there are --  
5 actually, there is a second letter. I don't know if  
6 you had time to see that or not.

7 MS. TOFT: From you or who?

8 MS. PIETRUCHA: From me.

9 MS. FORSHAW: We have a letter dated August  
10 3rd only.

11 MR. SCHLAFLY: It's not the same letter,  
12 but it's the same thing.

13 CHAIRMAN WALCH: This will be made as part  
14 of Exhibit E. There are two letters that have now  
15 been delivered to the City of Ladue.

16 MS. PIETRUCHA: Actually -- I sent you one  
17 in an email. You may have thought it was the same  
18 one.

19 CHAIRMAN WALCH: You may proceed.

20 MS. PIETRUCHA: Thank you very much. And  
21 please bear with me. I'm a little emotional. I know  
22 the letter is a little bit long.

23 MS. TOFT: You need not read the whole  
24 letter. It will be marked as an exhibit.

25 MS. PIETRUCHA: Sure. Should I scan over

1 it?

2 CHAIRMAN WALCH: You are welcome to say  
3 whatever testimony. The letter is already part of the  
4 record in this case, and so it's there, unless you  
5 need to explain something.

6 MR. STARR: Emphasize the main points that  
7 you would like to make.

8 MS. PIETRUCHA: Some of the main points is  
9 the enormity of this addition and how much space it's  
10 going to take up. I'm directly adjacent, and down in  
11 a lower elevation of this home, and the neighbors on  
12 the other side of me are also currently putting on an  
13 addition, and so I'm feeling really boxed in. It's  
14 really starting to block a lot of light and a lot of  
15 air flow is coming through. I worry about all the  
16 noise, all the debris, the construction vehicles, how  
17 they are going to get back, how they are going to  
18 handle all of this. These are all the main points  
19 from the first paragraph.

20 The second one is, I, too, am a homeowner  
21 and I chose this neighborhood, just as anybody else  
22 did. And it's just, you know, astounding to me  
23 because I chose it for the reason that it was  
24 park-like, and that we have pride in our ownership, no  
25 matter who we are. Whether we have, you know,

1 children who are the same age that play together, or  
2 friendships that go back for a really long period of  
3 time.

4 I do own my home. I do pay my taxes. I do  
5 keep it up, and I have added lots and lots of  
6 improvements, and I have maintained the value of my  
7 home. I do feel that I shouldn't be encroached upon  
8 because other people have decided after purchasing  
9 their home and many years later it's not big enough.  
10 So I think people knew when they bought their home  
11 what they were getting into.

12 I don't think it's in keeping with the  
13 subdivision policy. Things that you were mentioning  
14 before, times have changed and precedence is being  
15 set, and I definitely appreciate your comments about  
16 having to take a look at this in terms of, you know,  
17 not being McMansions, and it seems more and more that  
18 is what is happening. And there might be people who  
19 are in favor because maybe they want to open the door  
20 so they can do it afterwards. But it doesn't really  
21 take into account the many people who don't want it.

22 And last year, I don't remember when, I was  
23 not a part of it, but there were some things that came  
24 up in front of the board, and it became very, very  
25 ugly. As a result, I have a lot of people who have



1 told me they were opposed to this, but they are afraid  
2 of coming forward because after last year they were  
3 harassed, they were bullied. There were comments that  
4 were being made to people, especially age 50 and  
5 older, maybe there was an issue. There are a lot of  
6 things that have happened.

7 CHAIRMAN WALCH: I don't think that's  
8 relevant to the issues before us.

9 MS. PIETRUCHA: Okay. I did deviate, and I  
10 apologize.

11 There are a lot of reasons here that I  
12 didn't necessarily go through, and I really worry  
13 about the impact of my home and what it would do to  
14 the value of my home. You know, if I --

15 CHAIRMAN WALCH: I think we understand  
16 that.

17 MS. PIETRUCHA: Okay. There are a couple  
18 of things I will mention, one is that there isn't one  
19 item in the letter that demonstrates any hardship,  
20 just a desire. And I do want to quote something from  
21 Ladue City newsletter, from the mayor in previous  
22 publications. The first one is: We pride ourselves  
23 on strong selling regulations park-like neighborhoods  
24 and appealing residential properties and Ladue holds  
25 its residents to high standards to improving our

1 homes. This is an important response and thanks to  
2 the review board for the time and dedication that they  
3 do give generously to their time and expertise.

4 I couldn't agree more. So my heartfelt  
5 thanks to you, and please take into consideration what  
6 I have said here.

7 CHAIRMAN WALCH: Thank you. Now do we have  
8 one more?

9 MR. STARR: Yes. Mr. Grow would like to  
10 saw a few words.

11 MR. GROW: Thank you for giving me the  
12 opportunity. My name is Roger Grow. I am a retired  
13 city planner and the planning director from Webster  
14 Groves for 20 years.

15 CHAIRMAN WALCH: They have had their  
16 problems too.

17 MR. GROW: Before that I was the director  
18 of planning for St. Louis County. I appreciate the  
19 difficulties you have. I know land-use regulations  
20 are there to protect the neighborhood and property  
21 owners. Unfortunately individual property owners and  
22 most citizens don't understand how those regulations  
23 apply to their property.

24 I think a lot of our problems at Webster  
25 and yours would be dealt with a little more easily if

1 people understood what the setbacks mean before they  
2 hire an architect to start working on their plans to  
3 expand because this day and age lots of people want to  
4 stay where they are and they need to expand their  
5 homes.

6           What I have been asked to do is take a look  
7 at the factors that you would normally consider in  
8 justifying a variance. And I also took a look at the  
9 master plan because it bears on the specific issues  
10 that you are dealing with today.

11           Helmut Starr talked about what the legal  
12 constraints are. I won't go into that, but I do want  
13 to talk about the provisions. And a lot of these  
14 people are asking what constitutes a hardship. So  
15 your ordinance says, where there are practical  
16 difficulties or unnecessary hardships due to an  
17 irregular shape of the lot, topographic or other  
18 conditions. There is something unique about that lot  
19 that makes it differ and difficult to build with the  
20 person that wants to build.

21           If you look at this particular property and  
22 this block of Colonial Lane, there are about twelve  
23 properties, ten of which are exactly 50 by 130. Every  
24 lot is identical. They are rectangular. There is  
25 nothing about the shape of the property that would

1 prevent them from building an addition as long as they  
2 live within the constraints of the site setbacks set  
3 by the ordinance.

4           If you look at the topography I have been  
5 given, I don't know if you made copies, but this is a  
6 topo map from St. Louis County. I hand you that and  
7 you can pass it around. It shows topography at 4-foot  
8 intervals throughout the neighborhood. It shows that  
9 it's a fairly gradual slope throughout this block of  
10 Colonial Lane, and the subject property is probably  
11 one of the least affected by that slope situation. So  
12 I would argue from my position that topography and  
13 shape of lots are not -- not factors that contribute  
14 to hardship.

15           As you have heard from others tonight, the  
16 original basic footprint of the buildings here, they  
17 are all identical. The 27 feet deep by 36 feet wide,  
18 50 foot lots. They predate the original, the  
19 ordinance, obviously, because there are 10-foot side  
20 yard setbacks. A 50-foot lot, you can't have 10-foot  
21 setbacks. These particular houses set back, as you  
22 have heard, it's about 6 feet on one side -- or 8 feet  
23 on one side and about 7 or 6-foot on the other side.  
24 That's where the need for the variance comes in if  
25 they want to follow the existing building lines.

1           One of the things I took a look at were the  
2 other houses that are on this particular block. And  
3 again I was relying on St. Louis County real estate  
4 records from the County Assessor's office, because  
5 many of them have built additions. So I have taken  
6 some of those footprints, and you can see the basic  
7 building footprint of the original house of all of  
8 those 27-by-36 and where additions were added.  
9 Sometimes patios show up. Sometimes there is a  
10 one-story addition. Sometimes it's a two-story  
11 addition. I would point out on these though, from the  
12 County Assessor's office records, all the additions on  
13 the back are set back. Whether they are complying,  
14 whether they did not need a variance because they were  
15 set back for 10 feet, or whether they were built  
16 before you had the ordinance in place that set the  
17 setback at 10 feet; I don't know. But those suggest,  
18 the photograph you mentioned earlier, at least on this  
19 block when additions have been built, they built them  
20 back to comply with the setback limit. I think that  
21 suggests that it was possible to build additions to  
22 meet the needs of a growing household without having  
23 to violate the side yard setbacks.

24           One other point that I would make with  
25 regard to the zoning code is that when you are

1 considering a variation to be granted, it's not  
2 merely -- I'm quoting from your ordinance -- will not  
3 merely serve as a convenience to the applicant, but  
4 will alleviate some demonstrable and unusual hardship  
5 which is so difficult and so great as to warrant such  
6 variation and at the same time properly protect the  
7 surrounding properties. In this case, Ms. Pietrucha's  
8 property, you saw the slope of the site. Her property  
9 is about 3 to 4 feet lower than the subject property  
10 that's going uphill there. So when they build a  
11 two-story addition that is 6 feet from the property  
12 line, the mass of that is even that much more  
13 accentuated because her property is even lower. And I  
14 think that will result in loss of natural light from  
15 the north simply because it's that much closer and  
16 higher than would be allowed under the code.

17           Then I would like to turn just real quickly  
18 to the city's comprehensive plan which was available  
19 online and updated in 2006. And your consultant went  
20 through public process and identified the issues of  
21 the need to retain and limit Ladue's existing housing  
22 character and densities and the challenge of dealing  
23 with infill and maximum footprint, which they refer to  
24 as "McMansions", which are frequently out of scale to  
25 the surrounding structures. There are goals and

1 objectives and strategies, I think this is relevant to  
2 the board in reference to the trends toward McMansions  
3 on smaller lots. The elevations and footprints of  
4 these infills often dwarf not only their own lots but  
5 adjoining properties as well. In no residential area  
6 exists more potentially harmful than in the very small  
7 lot District E which is a 10,000 square foot minimum.  
8 Here the city should discourage the use of variances  
9 for front, side, and rear yard decline as well as  
10 elevations that are out of scale to surrounding  
11 buildings.

12           So I think that part of your comprehensive  
13 plan speaks specifically to this issue in this  
14 neighborhood. And I think it would, as you have in  
15 the E-1 District where you have a ratio that's been  
16 imposed to try to get a handle on that, unfortunately  
17 it will apply to this district, and I think if the  
18 city could move on that it would help solve some of  
19 the problems that you have been hearing about tonight.

20           I have two more exhibits which I will show  
21 you. I did take the liberty to look at the square  
22 footage from the County Assessor's office of liveable  
23 space in the thirteen houses that are on this lot of  
24 Colonial Lane. There are two numbers. The red one is  
25 the square footage of liveable space that the county

1 considers for assessment purposes. And I think  
2 universally it ignores the basement level. It's  
3 really the first and second floors.

4 In this block they range from -- let's see.  
5 They range from 1850 square feet, to 2387 square feet.  
6 And that includes those that have additions that have  
7 been built. That includes the additions.

8 This particular property I believe comes in  
9 at 1944 square feet. That's what they are paying  
10 their taxes on.

11 The red number that's on there is what we  
12 refer to as floor area ratio, which is the liveable  
13 floor square footage as a percentage of the square  
14 footage of the lot. And the range of those currently  
15 is 23 percent to 37 percent.

16 If this -- if these variances are granted  
17 and this addition is built, the square footage of this  
18 addition is 1941 square feet, and I will show you how  
19 I got that in a moment. And that will result in a 60  
20 percent floor area ratio, which is, as you were saying  
21 at the beginning of the hearing, it's outside the  
22 realm of anything in that lot.

23 The last thing I did was, you know, as a  
24 city planner and having access to architectural skills  
25 a little bit, I have a three dimensional drawing of



1 the building as it currently is on the property, and  
2 then I took the drawings that were on file from the  
3 building department, and this is the massing that you  
4 would get from this building as it was built according  
5 to the plans that are before you. I submit these to  
6 you as well.

7 So I would like to conclude. In my  
8 professional opinion the application does not meet the  
9 criteria necessary to justify approval of any  
10 variances and the application should be denied. There  
11 is nothing unique about the property which requires  
12 relief from the strict application of setback  
13 provisions either on its own merit or when considered  
14 with other properties in the neighborhood. Approval  
15 of a variance would permanently adverse the impact of  
16 the property immediately to the south in a way that  
17 could not be mitigated.

18 Furthermore, the comprehensive plan clearly  
19 states that the preservation of the character and  
20 scale of residential areas, particularly those  
21 neighborhoods where small lots exist, is an objective  
22 of the community and that minimum setback should not  
23 be waived in order to allow new construction that  
24 would out-scale the surrounding neighborhood.

25 That concludes my comments. Did you have a

1 copy?

2 MR. STARR: I don't, but I would like to  
3 ask the chairperson to mark those as Grow Exhibits 1  
4 through 5, I believe there were five that were  
5 presented.

6 CHAIRMAN WALCH: Yes. That will require --  
7 this will be Exhibit G, and it will be 1 through 5.

8 MR. GROW: Again, the source of most of  
9 that stuff is St. Louis County Department of Revenue.

10 MS. TOFT: With your wealth of experience,  
11 I would like to ask you some questions.

12 MR. SCHLAFLY: I apologize, but it is 6:00  
13 o'clock.

14 MS. TOFT: I will be quick.

15 Are there comparable size lots in the  
16 neighboring community of Clayton?

17 MR. GROW: I have not been asked to study  
18 that yet. I will be glad to look at that.

19 MS. TOFT: Are you familiar with other --  
20 from your experience in St. Louis County and Webster  
21 Groves -- other municipalities with similarly sized  
22 lots?

23 MR. GROW: Yes. The Webster Groves, the  
24 northern 20 percent of the city was platted in 50-foot  
25 lots. It was called Tuxedo Park. So we had legal

1 nonconforming lots like this all the time. And we  
2 do -- because we were having problems with some large  
3 infill houses of the "McMansion" size, we adopted  
4 regulations, the floor area ratios, as well as some  
5 additional regulations that govern the height of  
6 accessory structures, such as detached garages.

7 MS. TOFT: What is the floor area ratio?

8 MR. GROW: I would say it is probably --  
9 are you familiar with the area?

10 MS. TOFT: I am. My husband grew up on  
11 Tuxedo.

12 MR. GROW: I would say probably in the 30  
13 to 35 range, and I can't imagine us having much more  
14 than 45 percent.

15 MR. SCHLAFLY: I have several questions.

16 You are looking at that from a professional  
17 view, and you are coming to the variance board, you  
18 have a geometry that is the same in most of the lots,  
19 and the topography being flat, that the ability to  
20 make an application for hardship is pretty close to  
21 zero now; is that correct?

22 MR. GROWE: Yes.

23 MR. SCHLAFLY: What about the relevancy of  
24 the building and housing stock itself after 50 years?  
25 Is that a nonapplicable issue when it's presented

1 before the variance board? Because without making a  
2 house that was built 50 years ago relevant, then it is  
3 functioning obsolete.

4 MR. GROW: I'm not discounting the need and  
5 the practicality of the building restrictions.

6 MR. SCHLAFLY: You mentioned two not giving  
7 a variable; geometry, topography.

8 MR. GROW: There may be some instances.  
9 For example, I heard an issue about the garages being  
10 undersized. In Webster, the southern third of the  
11 city, there are a lot of smaller garages, and those  
12 have been converted to living space. And they were  
13 done without -- and now you cannot do that, have the  
14 parking space beyond the building line. But a lot of  
15 that conversion has gone on.

16 MR. STARR: May I add something to the  
17 answer that was asked by the question by Mr. Schlafly?

18 CHAIRMAN WALCH: Yes.

19 MR. STARR: What I would suggest is that  
20 the law simply doesn't allow variances to be the  
21 vehicle to deal with outdated houses. Setbacks and  
22 those -- and height limitations and area locations are  
23 set by the legislative body. If those have become too  
24 strict to allow a neighborhood to regenerate or to  
25 rejuvenate, then that ought be a legislative decision

1 that's driven by the city council and not through a  
2 variance.

3 CHAIRMAN WALCH: I think the discussion in  
4 the prior case, that was one of the major things we --

5 MR. BELLMAN: I'm an attorney also.  
6 Wouldn't it be implied that you have been delegated  
7 authority to issue variances? Are you saying  
8 constitutionally they don't have the right under  
9 Missouri law?

10 MR. STARR: Yes. Case law actually does  
11 limit the jurisdiction of the board to variances that  
12 relate to land.

13 MR. BELLMAN: So you are challenging all  
14 prior variances that have been granted? You are  
15 saying those are invalid?

16 MR. STARR: Some of them could have been,  
17 but, you know, you have a period of time to challenge  
18 those.

19 MR. KLITZING: Mr. Chairman, I would like  
20 to see if I can bring this to a close. We would like  
21 to ask for a continuance.

22 What we have learned today is basically  
23 that we can built directly off our building straight  
24 back. If we kept a 30-foot backyard that would be  
25 fine. We can modify our drawings.

1 MS. TOFT: You have an existing  
2 nonconforming side yard encroachment, and so I don't  
3 believe --

4 MR. KLITZING: What do we do, cut the house  
5 down?

6 MS. TOFT: Any addition or improvement that  
7 would continue to encroach -- well, I will leave that  
8 to Mr. Gartenberg and the building department.

9 MR. KLITZING: But the general tenor of the  
10 board earlier was if we came straight off the house,  
11 straight line-in-line with my existing house, that  
12 wouldn't have been an issue.

13 MR. GARTENBERG: In response to that. I  
14 think what the board has said -- what the board has  
15 said is that prior variances that have been granted  
16 have been of a much lesser scale than what they are  
17 hearing on this particular property.

18 But what has also been discussed is the  
19 fact that if an addition is put on and done in such a  
20 way that it does not encroach in a required yard,  
21 either required side yard or required rear yard, it  
22 would be reviewed administratively, and it would not  
23 require a zoning hearing.

24 These are the instances we are talking  
25 about today, and as a result it would not come before

1 this board. It would be reviewed for the qualities,  
2 architectural characteristics, impact on storm water,  
3 drainage, et cetera, but not be the zoning issue.

4 MR. KLITZING: The only question I have  
5 would be on the north side where the neighbors have no  
6 problem, on the 5-foot-10 side. We could build the  
7 addition there if we need that space.

8 We would have to come back before the  
9 board. But in regard to this side, we could actually  
10 make our 10-foot setback that's required, go back to  
11 the 30-foot setback to build that addition. I don't  
12 believe my addition or the addition that we are  
13 planning is no taller than the existing building. I  
14 don't believe there is a height issue.

15 MR. GARTENBERG: I don't think that the  
16 board has said its decision on whether an encroachment  
17 into a side yard, the action on that is dependent on  
18 whether the neighbor on that particular side favors it  
19 or not. It is looking at the mass that's being  
20 created by the proposed house and the encroachment  
21 into the side yards and rear yards, period.

22 MR. KLITZING: Understood. To actually  
23 skip the board we have to be -- you have got 4 foot on  
24 the north side and 2 foot on the south side.

25 MR. GARTENBERG: It would have to be in the

1 building envelope.

2 MR. KLITZING: That would be within the  
3 building envelope. But this board, obviously at some  
4 time or another, approved numerous additions that were  
5 in line with the existing house.

6 MR. GARTENBERG: They have spoken to that.  
7 Of scales that are different than what is being  
8 proposed here, much lesser scales.

9 MR. KLITZING: Well, if we are within the  
10 setback in the rear yard we would be within the scale.

11 MR. GARTENBERG: You are talking about a  
12 couple of different things. The variances that have  
13 been granted by the City of Ladue Board of Zoning  
14 Adjustment in this neighborhood for additions, if they  
15 do encroach into a required side yard, those additions  
16 were of a much lesser scale than what is being  
17 proposed here.

18 MS. TOFT: And I might add, the applicants  
19 made strong hardship cases also, where they had no  
20 garage, where they had -- they were hardship cases  
21 with each of those, or we would not have considered a  
22 variance were it not a hardship.

23 And you heard what Mr. Starr said about  
24 what constitutes the hardship. We have, because of  
25 older housing stock, been more generous in granting



1 variances in the past seven or eight years than have  
2 been here before the case.

3 I can tell you that when I started on this  
4 board there would have been no variance granted if the  
5 addition encroached on the side yard, regardless of  
6 whether the house was existing nonconforming or not.  
7 And it has been efforts that we have made, because we  
8 are very concerned about aging housing stock and the  
9 value of the homes, and we don't want them to be torn  
10 down and to have somebody building within the building  
11 line low but building on every square inch of it an  
12 ugly structure that nobody wants to live next door to.  
13 We try. It is not easy, but honestly these two, the  
14 additions are so far so much larger than anything we  
15 have seen before.

16 They are lovely applicants. They have  
17 lovely families. We would love them to stay in Ladue,  
18 but we have to draw the line somewhere.

19 MR. KLITZING: Basically your idea of  
20 scale; if we cut the building in 4 feet or 2 feet it's  
21 outside. We would be not here because we would  
22 conform. And that doesn't change the scale of this  
23 project that great to where when you are saying the  
24 scale, the project at that point would probably equal  
25 the footprint of the existing house.

1 MS. TOFT: There is also the Architectural  
2 Review Board. An existing nonconforming house where  
3 you want to make an addition, you probably would be in  
4 front of us, and we do try to consider mass and scale.

5 MR. KLITZING: They approved. They  
6 approved this already. The Architectural Review Board  
7 went through this already.

8 MS. TOFT: We didn't get into the mass and  
9 scale discussion that we normally get to because the  
10 size of the addition and the amount of the  
11 encroachment is so great. You would normally -- the  
12 mass and scale would be a natural part of our  
13 discussion. We just didn't get there.

14 MR. GARTENBERG: The Architectural Review  
15 Board is looking at that as a house -- as a whole,  
16 without consideration of the --

17 MR. KLITZING: But I'm confused. The  
18 Architectural Review Board already approved it.

19 MR. SCHLAFLY: We are just talking about  
20 encroachment. We are talking only encroachment.

21 MR. GARTENBERG: This group is looking at  
22 encroachment.

23 MR. KLITZING: I understand. But why would  
24 you bring up the Architectural Review Board to review  
25 it if they have already approved it? They already

1 approved it.

2 MR. STARR: If you have new plan, sir.

3 MS. TOFT: If you had a different plan and  
4 the board was inclined to grant the variance, or was  
5 discussing it, one of the things that we would discuss  
6 would be the mass, and the effect that it would have  
7 because you have an existing nonconforming house.

8 MR. SCHLAFLY: I think probably what he is  
9 saying, if he builds it inside the conforming building  
10 envelope he doesn't have to be here.

11 CHAIRMAN WALCH: You wouldn't have to come  
12 before this board.

13 MR. GARTENBERG: That's correct. The  
14 Architectural Review Board has reviewed this, this  
15 design that encroaches into the required yard, and  
16 they believe that it was appropriate for the  
17 neighborhood. So he is saying, I don't want to put  
18 words in your mouth, my take on this; that if it's  
19 scaled back so it does not go into the required yards  
20 he expected to find that acceptable as well.

21 MR. KLITZING: Correct.

22 MR. GARTENBERG: And that's how we will  
23 proceed.

24 MR. KLITZING: The only possibility that  
25 was granted back here that we have heard the setback

1 we gave, the 10 feet on each south side would be the  
2 extension on the north side. At that point I don't  
3 think we have any objections from anybody, because  
4 that neighbor has already said, you have the letter to  
5 that effect, that it's okay with them.

6 CHAIRMAN WALCH: That's not the way it  
7 works.

8 We are getting late, and you have asked for  
9 a continuance. Does the owner want to say something?

10 MR. SHIPLEY: Just one last thing. The  
11 house that sits to the north of us was granted a  
12 variance at some point. So we would like to consider  
13 that back yard this afternoon. You saw the house.  
14 They did go straight back. There is nothing different  
15 than what we are asking. That's all. Thanks. Thank  
16 you for your time.

17 MS. PIETRUCHA: One more statement.

18 CHAIRMAN WALCH: I have closed the public  
19 comment portion of this meeting. Is it relevant to  
20 the issues?

21 MS. PIETRUCHA: I do think so.

22 CHAIRMAN WALCH: The case has been  
23 continued. Do you understand what that means? It  
24 means that they may never come back here.

25 All right. Thank you everybody for

1 attending and for your comments.

2 MR. STARR: Is that continued to a date  
3 certain?

4 CHAIRMAN WALCH: It's under your control.  
5 We require you to get your plans, and revised plans  
6 into the building department -- how long in advance of  
7 the meeting? Is it two weeks, Mike? Mike, is it two  
8 weeks?

9 MR. GARTENBERG: I'm sorry?

10 CHAIRMAN WALCH: How far in advance do you  
11 need revised plans if it's going to require another  
12 variance?

13 MR. GARTENBERG: It's a simple question,  
14 but it's not a simple answer. Those plans would need  
15 to go through the review process internally. The  
16 Architectural Review Board and I would review them.  
17 Then once review comments are sent back, and there is  
18 still nonconformity, they would need to be received  
19 here approximately three weeks prior to the hearing  
20 date.

21 MS. LAMITOLA: 121 days before the meeting.

22 CHAIRMAN WALCH: Very unlikely to get on  
23 the September docket. You are not the appellant.

24 MR. GARTENBERG: They still have to be  
25 received and reviewed.

1 MS. TOFT: The appellant would be sent  
2 another notice of the next hearing.

3 MS. LAMITOLA: Not specifically on this  
4 case anymore. Will we be holding the next ZBA after  
5 Labor Day or the second Monday?

6 MS. TOFT: Should we close the hearing?

7 CHAIRMAN WALCH: Yes. Let's close the  
8 hearing.

9 (Hearing concluded at 6:20 p.m.)  
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CERTIFICATE OF REPORTER

I, Bobbie L. Lubber, Registered Professional  
Reporter, Certified Court Reporter, and Notary Public  
within and for the State of Missouri, do hereby  
certify that the meeting aforementioned was held on  
the time and in the place previously described.

IN WITNESS WHEREOF, I have hereunto set my hand  
and seal.



Bobbie L. Lubber, RPR, CCR #621

